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EXAMINER	
JAGANNATHAN, MELANIE	

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte WIM HENDERICKX, PETER ALFONS VAN HESSCHE,
and GUIDO JOSEF NELLY HEREYGERS

Appeal 2009-010946
Application 10/690,544
Technology Center 2400

Before ALLEN R. MacDONALD, ROBERT E. NAPPI, and
CARL W. WHITEHEAD, JR., *Administrative Patent Judges*.

MacDONALD, *Administrative Patent Judge*.

DECISION ON APPEAL[1]

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[1] The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, or for filing a request for rehearing, as recited in 37 C.F.R. § 41.52, begins to run from the "MAIL DATE" (paper delivery mode) or the "NOTIFICATION DATE" (electronic delivery mode) shown on the PTOL-90A cover letter attached to this decision.

STATEMENT OF CASE

Introduction

Appellants appeal under 35 U.S.C. § 134 from a final rejection of claims 1-3 and 5-9. Claim 4 has been cancelled. We have jurisdiction under 35 U.S.C. § 6(b).

Exemplary Claim

Exemplary independent claim 1 under appeal reads as follows:

> Claim 1. A telecommunication router connected to a termination link and comprising a processor adapted to handle packets of data received from said link, the telecommunication router comprising:
>
> a plurality of queues adapted to store packets of data before said packets of data are transferred to said processor; and
>
> a packet classifier adapted to receive said packets of data from said termination link, to classify said received packets of data according to predetermined types, and to forward each of said classified packets of data towards one queue of said plurality of queues, said one queue being selected according to the type of each of said classified packets of data;
>
> wherein
>
> each of said predetermined types is associated to a predetermined priority;
>
> said processor is adapted to retrieve packets of data from the queues of said plurality according to predetermined priority rules; and
>
> each queue of said plurality of queues is controlled by a queue manager adapted to discard packets coming from said packet classifier when a predetermined threshold filling level of the queue is reached.

Rejection

The Examiner rejected claims 1-3 and 5-9 under 35 U.S.C. § 102(e) as being anticipated by DiBiasio, U.S. Patent 7,225,271 B1.

Appellants' Contention

Appellants contend that nothing in DiBiasio appears to contemplate discarding packets.

Issue on Appeal

Has the Examiner erred in rejecting claims 1-3 and 5-9 as being anticipated?

ANALYSIS

Appeal Brief

We have reviewed the Examiner's rejections in light of Appellants' contentions that the Examiner has erred.

We disagree with Appellants' conclusions. We adopt as our own (1) the findings and reasons set forth by the Examiner in the action from which this appeal is taken and (2) the reasons set forth by the Examiner in the Examiner's Answer in response to Appellants' Appeal Brief. We concur with the conclusion reached by the Examiner.

Additionally, Appellants' arguments contend that apparatus claim 1 distinguishes over the prior art due to the claimed "a queue manager adapted to discard packets coming from said packet classifier when a predetermined threshold filling level of the queue is reached" (Claim 1). However, the disclosure of the claimed "queue manager" is little more that a statement of the queue manager's function: "In order to prevent overload of the queues, each queue P0-P3 is controlled by a queue manager (not shown) that

discards packets arriving from the packet classifier CL when a predetermined threshold filling level T0-T3 of the queue is reached" (Spec. 6:3-6). Contrary to Appellants' contention that DiBiasio's dropping of packets teaches away from the claimed invention, given the breadth of Appellants' claimed "queue manager," we find that even the undesirable dropping of a packet when a new packet arrives at a full queue is sufficient to meet the discarding limitation (DiBiasio, col. 12, ll. 16-19).

CONCLUSIONS

(1) The Examiner has not erred in rejecting claims 1-3 and 5-9 as being anticipated under 35 U.S.C. § 102(e).

(2) Claims 1-3 and 5-9 are not patentable.

DECISION

The Examiner's rejection of claims 1-3 and 5-9 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(v).

AFFIRMED

babc

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